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SECRETARY, BOARD OF
OIL, GAS & MINING

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Special Service District

BEFORE THE BOARD OF OIL, GAS, AND MINING

DEPARTMENT OF NATURAL RESOURCES, STATE OF UTAH

IN THE MATTER OF THE
REQUEST FOR AGENCY
ACTION BY PETITIONERS
NORTH EMERY WATER
USERS ASSOCIATION,
HUNTINGTON-CLEVELAND
IRRIGATION COMPANY, AND
CASTLE VALLEY SPECIAL
SERVICES DISTRICT

ACT/015/025

APPEAL OF DIVISION DETERMINATION
TO APPROVE SIGNIFICANT REVISION
TO PERMIT TO ALLOW MINING OF
TANK SEAM BY CO-OP MINING COMPANY

DOCKET NO. 94-027

CAUSE NO. ACT/015/025

North Emery Water Users Association ("NEWUA") and Huntington-Cleveland Irrigation Co. ("Huntington-Cleveland"), by and through their counsel, J. Craig Smith and David B. Hartvigsen of Nielsen & Senior and Castle Valley Special Service District ("Castle Valley"), by and through its counsel, Appel & Mattsson, respectfully submit this Request For Agency Action and Appeal of

Division determination to approve Co-Op Mining Company's ("Co-op") Significant Revision to extend its mining operations into the Tank Seam. This seam is located above the existing seam being mined and within the existing permit area of the Bear Canyon Mine (ACT/015/025).

NEWUA, Huntington-Cleveland and Castle Valley are collectively referred to herein as "Appellants/Petitioners".

LEGAL AUTHORITY & JURISDICTION OF THE BOARD

Appellants/Petitioners include a governmental entity and two non-profit corporations which provide the majority of domestic, municipal, irrigation and industrial water to Northern Emery County. They are appealing a Division determination to approve a Significant Revision of a Permit held by Co-op Mining Company to allow mining of the Tank Seam via the Bear Canyon Mine. Administrative review of a Division determination by this Board is provided under R645-300-200.

Persons with an interest which may be adversely affected may appeal a Division determination to this Board. Critical water sources of Appellants/Petitioners are found in the area of the Bear Canyon Mine. Castle Valley has developed and uses Big Bear Spring, and NEWUA has developed and uses Birch Spring. Both springs are in close proximity to the area being mined by Co-op. Huntington-Cleveland holds the water rights which are utilized by Castle Valley to serve Huntington City and by NEWUA to serve the domestic needs of unincorporated northern Emery County.

As water rights holders and water users of water sources in the immediate area of Co-op's mining, the Appellants/Petitioners are persons with an interest which may be adversely affected under R645-300-211 and R645-100-100. The Division determination to approve the significant revision was made on July 22, 1994, thus the appeal of a Division determination by persons with an interest which may be adversely affected is timely if filed on or before August 22, 1994 under R645-300-2.

RELIEF REQUESTED

Appellants/Petitioners respectfully request that this Board reverse the Division determination approving the Significant Revision, or in the alternative, Stipulations be added to the approval requiring Co-op to provide, at no expense, replacement water to Appellants/Petitioners to mitigate the adverse impacts of its mining activity on Big Bear Springs and Birch Spring, and require Co-op to implement adequate procedures to protect these water resources from contamination.

FACTS AND BASIS FOR RELIEF

1. Castle Valley is a local government entity that provides culinary water to the communities of Huntington, Cleveland and Elmo, Utah. Castle Valley provides water for approximately 1,050 connections (which includes at least 2,650 persons) from springs located in the proximity of Co-op's mining operations, including Big Bear Springs. A major portion of Huntington City's culinary water supply is diverted from Big Bear Springs, which is in the immediate area of the Bear Canyon Mine.

2. NEWUA is a mutual water company that provides culinary water to approximately 420 connections in the unincorporated portion of northern Emery County. It has developed Birch Spring which is also in the immediate vicinity of the Bear Canyon Mine, at a cost of approximately \$60,000.00 to provide culinary water to the homes it serves.

3. Huntington-Cleveland is a mutual water company that holds the water rights utilized by Castle Valley and NEWUA in Big Bear and Birch Springs.

4. Co-op has not taken adequate measures to protect Appellants/Petitioners' water sources either in its present mining areas or in its proposed mining area of the Tank Seam. Appellants/Petitioners are particularly concerned about the continuing integrity of their water sources given the material negative impacts on Big Bear and Birch Springs in the area of Co-op's mining operations which include the following:

a. Co-op's past mining operations have contaminated Big Bear Springs and Birch Spring and the aquifers feeding these springs.

b. Co-op's past mining operations have adversely and permanently impacted the level of flow of Big Bear and Birch Springs. The flows have significantly diminished as a result of Co-op's mining operations and have not recovered and/or recharged even after the "wet" water years.

c. Over the years, Co-op has been cited by the Division of Oil, Gas & Mining ("DOGM") for failing to adequately

protect the hydrologic resources in the proximity of its mining operations.

d. As recently as February of this year, Co-op was assessed penalties by DOGM for failing to take adequate precautions to protect hydraulic resources at its Big Bear Mining operations.

5. Co-op's proposed expansion of its mining operations into the Tank Seam will continue and increase the adverse impact upon Big Bear and Birch Springs and the aquifers feeding the springs.

6. Appellants/Petitioners believe Co-op's proposed expansion will continue to harm to their vested water rights and sources. Big Bear and Birch Springs represent critical and irreplaceable sources of water for Huntington City, Elmo Town and Cleveland Town and adjacent unincorporated Emery County.

7. Evidence of surface subsidence along the faults from which Big Bear and Birch Springs emanate demonstrates that Co-op's mining is impacting those faults.

8. According to Co-op's own records, it is currently encountering 500 gallons per minute in the Bear Canyon Mine, and it is diverting 200 gallons to uses within the mine and 300 gallons per minute out of the mine and away from its natural course.

9. There is no indication that Co-op has made the necessary filings with the State Division of Water Rights or has received the necessary approvals from the Division for use of this water in the mine or elsewhere.

10. It is apparent from the high quantity of ground water being diverted (now reported at a rate of 500 gpm) from the Co-op Mine, the mine has intersected dynamic ground water that has been naturally existing in the regional Blackhawk-Star Point aquifer which supplies the Big Bear and Birch Springs.

11. The fact that groundwater interception and flow has increased as Co-op Mining has extended their workings farther north, shows that they are penetrating the regional Blackhawk-Star Point aquifer deeper, where there is a higher head with increased flow.

12. As further data is collected on the hydrology and geology of the area, it becomes more obvious from the reporting geologists of the U.S. Geological Survey in three separate studies of the region, that the Blackhawk Formation is a part of the regional, large storage aquifer which includes the sandstone members of the Star Point Sandstone. The United States Geological Survey ("USGS") reports are:

Danielson, T.W., and others, 1981, Hydrology of the Coal-Resources Area in the Upper Drainages of Huntington and Cottonwood Creeks, Central Utah: U.S. Geological Survey, Open-File Report 81-539, prepared in cooperation with the Utah Department of Natural Resources and Energy, Division of Oil, Gas and Mining;

Lines, G.C., 1985, The Ground-Water System and Possible Effects of Underground Coal Mining in the Trial Mountain Area, Central Utah: U.S. Geological Survey Water-Supply Paper 2259; and

Waddell, K.M., and others, 1986, Hydrology of the Price River Basin, Utah with Emphasis on Selected Coal-Field Areas: U.S. Geological Survey Water-Supply Paper 2246.

13. The Probable Hydrologic Consequence ("PHC") prepared by Co-op's consultants, upon which the Division relied in approving the Significant Revision, discounts all of the USGS studies and reports done on the expanded region in regards to their identifying the regional aquifer to be comprised of both the Blackhawk and Star Point formations.

14. The PHC and the Cumulative Hydrologic Impact Assessment ("CHIA") both fail to recognize the adverse impact of Co-op's mining and specifically mine dewatering activity on regional aquifers that feed the Big Bear and Birch Springs, and thus the CHIA fails to meet the minimum requirements of R645-301-729.100 in not recognizing or mitigating the material damage to hydrologic balance outside of the permit area.

15. The approval of the Significant Revision also violates R645-301-731 and its subsections in failing to recognize and require steps to minimize disturbance to the hydrologic balance.

16. The approval of the Significant Revision also violates lease stipulations of the United States Bureau of Land Management which is the federal agency which manages the lands and subject minerals leased to Co-op.

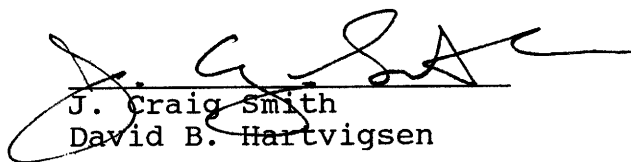
17. The approval of the Significant Revision fails to require Co-op to obtain the necessary approvals or otherwise abide by the requirements of State agencies including, but not limited to, the Division of Water Rights and Department of Environmental Health.

For the reasons and grounds set forth herein, and in previous Memoranda and oral argument on the subject, Appellants/Petitioners

respectfully request that they be given an opportunity for a hearing where they can each present oral argument and demonstrate the material damage which will result to their water sources if the Division's approval of the Significant Revision is not reversed or altered.

DATED this 22nd day of August, 1994.

NIELSEN & SENIOR



J. Craig Smith
David B. Hartvigsen

APPEL & MATTSSON



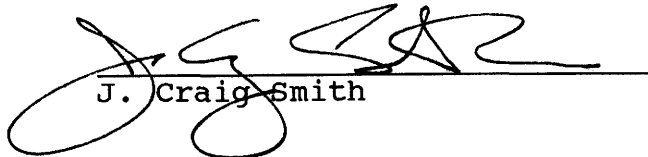
Jeffrey W. Appel
Michele Mattsson

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing instrument upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, with postage prepaid, to:

Mr. Wendell Owen
Co-op Mining Company
P. O. Box 1245
Huntington, Utah 84528

Dated at Salt Lake City, Utah, this 22nd day of August, 1994.


J. Craig Smith